IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11461 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Petitioner(s)

Versus

RAMESHCHANDRA CHAGANBHAI MOCHI - Respondent(s)

==========

Appearance :

MR HD DAVE ASST GOVERNMENT PLEADER for Petitioner No(s).: 1.

MR HRIDAY BUCH for Respondent No(s).: 1.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/08/2005

ORAL JUDGMENT

1. Rule. Shri H.C.Buch, learned advocate waives service of rule on behalf of the respondent workman.

2. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

3. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner – State of Gujarat has challenged the legality and validity of the judgment and award passed by the Labour Court, Bharuch dated 29th June, 2004 in Reference (LCB)) No.107 of 1999 (Old No.613 of 1987) in partly allowing the same and directing the petitioner to reinstate the respondent workman with 15 % backwages and with continuity of service.

4. The respondent workman raised the Industrial dispute challenging his alleged termination with effect from 2nd July, 1985 which was referred to the Labour Court, Bharuch for its adjudication being Reference (LCB) No.107 of 1999. It was contended on behalf of the respondent workman that he has worked for more than five years and that his services came to be terminated orally with effect from 2nd July, 1985 in breach of Section-25-F of the Industrial

Disputes Act, 1947 and therefore, it was requested to direct the petitioner to reinstate him with full backwages. It appears from the record that the said reference was resisted by the petitioner and the application was submitted raising the preliminary objection with regard to maintainability of the reference contending interalia that the petitioner is not an “industry” within the definitions and the provisions of the Industrial Disputes Act. It appears that the petitioner did not file any written statement and / or reply to the Statement of Claim. Considering the judgment of this Court, the Labour Court held that the petitioner is an industry within the provisions of the Industrial Disputes Act and held that service of the respondent workman came to be terminated without giving any notice, notice pay and / or retrenchment compensation and therefore, there is breach of Section-25-F of the I.D.Act and therefore, by judgment and award dated 29th June, 2004 directed the petitioner to reinstate the respondent workman with 15 % backwages and continuity of service. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court,

Bharuch dated 29th June, 2004 passed in Reference (LCB) No.107 of 1999 the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

5. Shri H.D.Dave, learned AGP appearing on behalf of the petitioner has vehemently submitted that the finding given by the Labour Court with regard to breach of Section-25-F is mainly on the ground that no notice, notice pay and / or retrenchment compensation is paid to the respondent workman, however, there is no finding that the respondent workman has completed 240 days continuously in the last preceding year. It is therefore submitted that in absence of any finding with regard to completion of 240 days in the last preceding year, the Labour Court was not justified in passing the order of reinstatement by holding that there is breach of Section-25-F of the I.D.Act. He has further submitted hat in fact the respondent workman has not produced and/or adduced any evidence to show that he has worked for more than 240 days in the last preceding year and onus is upon the respondent workman to prove

that he has worked for more than 240 days in the last preceding year. He has submitted that so far as the contention on behalf of the petitioner that the petitioner is not an industry, he has not pressed for the same in view of the judgment and order of this Court taking the view that the petitioner is an industry as defined under the provisions for the Industrial Disputes Act. Therefore, it is requested to allow the present special civil application.

6. Per contra, Shri H.C.Buch, learned advocate appearing on behalf of the respondent workman has tried to support the judgment and award passed by the Labour Court, Bharuch. He has submitted that it was case on behalf of the respondent workman that he was working for last five years and his services came to be terminated without giving any notice, notice pay, retrenchment compensation which has been accepted by the Labour Court and it is rightly held by the Labour Court that there is breach of Section-25-F of the I.D.Act and therefore, it is requested to dismiss the present special civil application.

7. It is also further submitted that Shri H.C.Buch that in fact the respondent workman is already reinstated to his original post since August, 2004. Shri H.D.Dave, learned AGP at this stage has submitted that the respondent workman is reinstated pursuant to the judgment and order passed by the Labour Court, Bharuch subject to challenging the same so that the petitioner has not to pay the idle wages to the workman.

8. Heard the learned advocates appearing on behalf of the parties.

9. It is true that it was the case on behalf of the respondent workman that he was working since last five years but there is no evidence adduced on his behalf to prove that he has worked for 240 days in the last preceding year. Nothing has been discussed by the Labuor Court with regard to any evidence. Even there is no finding given by the Labour Court to the effect that the respondent workman has worked for 240 days in the last preceding year. For the purpose of considering Section-25-F of the Industrial Disputes

Act, the workman has to prove that he has worked for more than 240 days in the last preceding year and for getting benefit under Section-25-F, he has to adduce the evidence and prove that he has worked for more than 240 days in the last preceding year. Initially, the onus is upon the workman to prove by the documentary evidence and /or the other evidence that he has worked for more than 240 days in the last preceding year. Merely because of no notice was served, no notice pay and /or no retrenchment compensation is given, is not sufficient for the purpose of establishing the breach of Section-25-F of the Industrial Disputes Act. In a given case, it may happen that if a workman has not worked for 240 days in the last preceding year, then notice, notice pay and retrenchment compensation as required under Section-25-F of the Industrial Disputes Act is not required to be given and / or paid. Under the circumstances, the reasoning given by the Labour Court with regard to breach of Section-25-F of the Industrial Disputes Act only on the ground that no notice, no notice pay and/or retrenchment compensation is paid before terminating services of

the respondent workman, cannot be sustained. Under the circumstances,the the judgment and award passed by the labour Court is required to be quashed and set aside and the matter is to be remanded to the Labour Court for its fresh decision in accordance with law and on merits. In view of the fact that the respondent workman is already reinstated and working since August, 2004 as submitted by the respondent which is not disputed by Shri H.D.Dave, learned AGP, the present position during the pendency of the reference on remand requires to be continued subject to ultimate outcome of the reference and the judgment and award that may be passed by the Labuor Court on remand.

10. For the reasons stated above, the petition succeeds partly. The judgment and award passed by the Labour Court, Bharuch dated 29th June, 2004 in Reference (LCB)) No.107 of 1999 (Old No.613 of 1987) is hereby quashed and set aside and the matter is remanded to the Labour Court, Bharuch for its fresh decision in accordance with law and on merits and considering the observations made hereinabove. It

will be open for the parties to lead fresh evidence which may also be considered by the Labour Court. Until the reference is decided and disposed of the present position with regard to service conditions of the respondent workman be continued without prejudice to the rights and contentions of the petitioner and subject to ultimate outcome of the Reference No.107 of 1999 and judgment and award that may be passed by the Labour Court, Bharuch on remand.

11. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

=kailash=